

THE HONORABLE RICARDO S. MARTINEZ

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

ORIGINAL

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNDER SEAL,

Plaintiff,  
v.

UNDER SEAL,

Defendants.

No. C11-2129-RSM

**FILED UNDER SEAL**

Note on Motion Calendar for:  
September 21, 2012



11-CV-02129-RCPT

THE HONORABLE RICARDO S. MARTINEZ

ORIGINAL

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, ex rel.  
CHARLES E. PLUNKETT,

Plaintiff,  
v.

UNITED HEALTHCARE OF WASHINGTON,  
INC., et al.,

Defendants.

No. C11-2129-RSM

**FILED UNDER SEAL**

Note on Motion Calendar for:  
September 21, 2012

**UNITED STATES' NOTICE OF ELECTION  
TO DECLINE INTERVENTION AND MOTION TO LIFT THE SEAL**

Pursuant to the False Claims Act, as amended, 31 U.S.C. § 3730(b)(4)(B), the United States of America hereby notifies the Court of its decision not to intervene in this action at this time.

Although the United States declines to intervene, the government respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the Relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* Notwithstanding this statutory language, the Ninth Circuit has concluded that the United States has the right only to a hearing when it objects to a settlement or dismissal of the action.

UNITED STATES' NOTICE OF ELECTION TO  
DECLINE INTERVENTION AND MOTION TO  
LIFT THE SEAL - 1  
(C11-2129-RSM)  
**FILED UNDER SEAL**

UNITED STATES ATTORNEY  
700 STEWART STREET, SUITE 5220  
SEATTLE, WASHINGTON 98101-1271  
(206) 553-7970

1 *United States ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *United States*  
2 *ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Accordingly, the  
3 United States requests that should either the Relator or the defendants propose that this action  
4 be dismissed, settled, or otherwise discontinued, this Court provide the United States with  
5 notice and an opportunity to be heard before ruling or granting its approval.

6 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all  
7 pleadings filed in this action be served upon the United States and that orders issued by the  
8 Court be sent to the government's counsel. The United States reserves its right to order any  
9 deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the  
10 dismissal of the Relator's action or claim under 31 U.S.C. § 3730(e)(4). The United States also  
11 requests that it be served with all Notices of Appeal.

12 Finally, the government requests that the Relator's Complaint, this Notice, and the  
13 attached proposed Order be unsealed. The United States requests that all other papers on file in  
14 this action remain under seal because, in discussing the status and extent of the United States'  
15 investigation, such papers are provided by law to the Court for the sole purpose of evaluating  
16 whether the seal and time for making an election to intervene should be extended.

17 //

18 //

1 A proposed order accompanies this notice.

2 DATED this 21st day of September, 2012.

3 Respectfully submitted,

4 JENNY A. DURKAN  
5 United States Attorney  
6 Western District of Washington

7 

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9 Assistant United States Attorney  
10 United States Attorney's Office  
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**UNITED STATES' NOTICE OF ELECTION TO  
DECLINE INTERVENTION AND MOTION TO  
LIFT THE SEAL - 3  
(C11-2129-RSM)  
FILED UNDER SEAL**

UNITED STATES ATTORNEY  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

That on September 21, 2012, she filed under seal the United States' Notice of Election to Decline Intervention and Motion to Lift the Seal and [proposed] Order and served copies of such on the person(s) hereinafter named by depositing said copies in the United States mail, postage prepaid, addressed as follows:

Adam G. Snyder  
OGDEN MURPHY WALLACE P.L.L.C.  
601 Fifth Avenue, Suite 2100  
Seattle, Washington 98101

*Attorney for Plaintiff/Relator Charles E. Plunkett*

DATED this 21st day of September, 2012.



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UNITED STATES' NOTICE OF ELECTION TO  
DECLINE INTERVENTION AND MOTION TO  
LIFT THE SEAL - 4  
(C11-2129-RSM)  
**FILED UNDER SEAL**

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